

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. S-02/08-80
)
 Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Office of Vermont Health Access (OVHA) denying her request for an exception under M108 for coverage for the installation of a walk-in shower in her home. The issue is whether the petitioner has shown that serious detrimental health consequences will occur if she does not receive such coverage.

FINDINGS OF FACT

1. The petitioner is a thirty-seven-year-old woman with a history of obesity and severe lymphedema involving chiefly her right leg. In January 2008 the petitioner requested Medicaid coverage for modifications to her home to install a walk-in shower. Presently, her bathroom only has a standard tub.

2. Following the Department's denial of this request and the petitioner's appeal in February 2008, the matter was continued three times to allow the petitioner to submit additional evidence. At status conferences held on May 5 and

June 5, 2008 the petitioner was specifically advised by the hearing officer to have her medical providers address the rationale given by the Department in its denial. At a status conference held by phone on July 10, 2008, the petitioner indicated that she had no further evidence to submit.

3. The petitioner's initial request was accompanied by the following letter and attached treatment notes from her treating physician:

[Petitioner] has applied for assistance in providing a walk-shower for her apartment. She has chronic severe lymphedema involving chiefly her right lower leg. A recent hospital admission note and discharge summary for one of the many admissions she has had to deal with infections of this areas is enclosed. We have extensive office notes and hospital records documenting outpatient care, emergency and urgent care visits, and inpatient care for this problem.

The purpose of the proposed modification of her living quarters is prevention of falls due to mobility problems getting into and out of a conventional bathtub. To the best of my knowledge, no serious injury has yet occurred to her as a result of this problem, but her hugely swollen lower leg presents a real risk of serious problems. As the record show, she does have frequent cellulitis of this extremity with no obvious portal of entry; injury to the leg in a fall increases the risk of such infection and would make management of an infection more difficult.

I trust that this information will be useful to you in making a decision about her situation.

4. The record in this matter also contains the following report from a consulting physical therapist dated March 25, 2008:

This letter is in regards to [petitioner's] appeal for assistance in providing a walk-in shower for her apartment. A physical therapy evaluation was preformed on 03/25/2008. With her severe lymphedema in her right extremity, [Petitioner] presented with minimal difficulty getting into and out of tub from a standing position. She was able to perform the task with the use of grab bars without any loss of balance or unsteadiness.

Her plans are to move into a different apartment in a month, where there is a sitting area on one end of the tub. Here she will be able to sit and then swing her legs into the tub. There are no grab bars in this tub however. She presents with strength deficits in her right leg, and some difficulty is anticipated with swinging this leg into the tub. Transfer into this tub was not demonstrated at the time of the evaluation, as work was going on in the apartment and transfer into the tub was not possible. This method may cause some scraping of her leg while attempting to get into the tub, and could lead to an infection.

A walk-in shower would be ideal. However, stepping into the tub with the use of grab-bars would also be appropriate as this does not present with any significant increase in fall risk, and for her it is an achievable task. [Petitioner] is able to use care and judgment to ensure safety. A shower-seat could also be utilized while taking a shower. If a shower seat is used, then a hand-held showerhead would also be beneficial.

In terms of mobility, [petitioner] is able to ambulate household distances and in foyer and hallway of apartment building without difficulty and with good balance, as demonstrated during the time of the evaluation.

Hope the above is helpful in your decision making.

5. Another brief report submitted by her treating physician dated June 20, 2008 noted: "Her continuing interest in equipping her apartment with a walk-in shower has our support. Her leg problem is such that maneuvering into and out of a conventional tub or shower represents a risk of falls and injury for her."

6. After reviewing the medical evidence, the Department's medical consultants noted that the petitioner could likely benefit from physical and "decongestive" therapies to improve her mobility, and that using grab bars and a "transfer tub bench" would lessen the likelihood of injury, and that these therapies and equipment are covered under Medicaid.

7. Based on the above, it cannot be concluded that the Department's determination that the petitioner's problems are not unique and can be sufficiently ameliorated by other means is unreasonable. Moreover, there is no indication that her doctors disagree with the Department's assessment.

ORDER

The Department's decision is affirmed.

REASONS

There is no dispute in this matter that home modifications in general are not covered under Medicaid. See W.A.M. § M840.6. However, OVHA has a procedure for requesting exceptions to this and other areas of non-coverage, which requires the recipient to provide information about her situation and supporting documentation. W.A.M. § M108. Under this provision OVHA must review the available medical information submitted in relation to a number of criteria as set forth below:

1. Are there extenuating circumstances that are unique to the beneficiary such that there would be serious detrimental health consequences if the service or item were not provided?
2. Does the service or item fit within a category or subcategory of services offered by the Vermont Medicaid program for adults?
3. Has the service or item been identified in rule as not covered, and has new evidence about efficacy been presented or discovered?
4. Is the service or item consistent with the objective of Title XIX?
5. Is there a rational basis for excluding coverage of the service or item? The purpose of this criterion is to ensure that the department does not arbitrarily deny coverage for a service or item. The department may not deny an individual coverage of a service or item solely based on its cost.
6. Is the service or item experimental or investigational?

7. Have the medical appropriateness and efficacy of the service or item been demonstrated in the literature or by experts in the field?
8. Are there less expensive, medically appropriate alternatives not covered or not generally available?
9. Is FDA approval required, and if so, has the service or item been approved?
10. Is the service or item primarily and customarily used to serve a medical purpose, and is it generally not useful to an individual in the absence of an illness, injury, or disability?

In several past decisions, including one that was affirmed by the Vermont Supreme Court, the Board has extensively examined the criteria of M108 as it applies to non-covered items and services. See e.g. Fair Hearing No. 16,223; aff'd; Cameron v. D.S.W., Vermont Supreme Court Docket No. 2000-339 (8/23/01). It has held that M108 gives OVHA the authority to make exceptions for Medicaid coverage in cases it deems meet the above criteria, and that the Board may only overturn an M108 decision if it is shown to be arbitrary, unreasonable, or otherwise an abuse of discretion.

In this case, the Department's rationale denying coverage thoroughly addresses all the evidence submitted in support of the petitioner's request. Although a walk-in shower would certainly benefit the petitioner, as noted above, the Department has instead offered the petitioner

coverage for other devices and therapies aimed at comprehensively addressing her problems with mobility. Moreover, there is no indication that the petitioner's doctor would not support this option as a first resort. In light of this, it cannot be concluded that the Department's decision denying the petitioner's request for a walk-in shower installed in her home is in any way contrary to M108, especially criterion no. 1 (*supra*), in that it has not been shown the petitioner will suffer "serious detrimental health consequences" if she cannot obtain this item. Thus, the Board is bound at this time to affirm the Department's decision. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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